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I. REAL PARTY IN INTEREST

The real party of interest in this application is the assignee, Unity Interactive LLC (CA, USA).

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

The claims under appeal are claims 1-6 and 9-22.

The status of the claims in this application is as follows:

- Claims 1-6 and 9-22 are rejected.
- Claims 7 and 8 are canceled.

IV. STATUS OF AMENDMENTS

No amendment was submitted subsequent to the Final Rejection of November 30, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention defined by independent **claim 1** under appeal is a story-telling doll as described primarily on page 7, lines 1-16, with reference to Figure 1. The story-telling doll has a doll body **10** which contains a processing system **12** including at least one digital processor, a programmable data storage device **14** associated with processing system **12**, and an audio output device **16** associated with processing system **12**. At least one user-operable switch **SW1**, **SW2**, **SW3** is manually operable by manipulation of at least one region **18**, **20**, **22** of body **10** to provide an input signal to processing system **12**. A communications unit **24**, also contained within body **10**, is configured to operate under control of processing unit **12** in response to the input signal to: (a) initiate a data communications link via a general purpose communications network with a remote content provider source, (b) transmit to the remote content provider a request for download of at least one data file including audio content, and (c) receive the at least one data file including audio content from the remote content provider. Processor system **12** is further configured to save the at least one data file in storage device **14** and subsequently to play the audio content read from the at least one data file via audio output device **16**.

The invention defined by dependent **claim 4** is similar to that of claim 1 described above, but further requires that communications unit **24** includes a modem configured for initiating a data connection across a cellular telephone network as detailed on page 9, lines 8-10 and 16-17.

The invention defined by dependent **claim 5** is similar to that of claim 1 described above, but further requires that communications unit **24** includes a modem configured for initiating a data connection across a telephone network (page 9, lines

8-10) and a socket 26 associated with the modem and configured for wired connection to the telephone network (page 9, lines 13-15).

The invention defined by dependent **claim 6** is similar to that of claim 1 described above, but further requires that processing system 12 is configured to perform a content selection process as described with reference to steps 52 through 62 of Figure 2 and from page 12, line 12 through page 13, line 6. Specifically, processing system 12 is configured to receive at step 52 information relating to the available options (e.g., titles of each available option or menu options). The information is used to generate an audio prompt (step 54) indicating to the user what options are available. A user input is obtained (step 56) to select a particular option, and a response indicative of the selected option is sent by communications unit 24 back to the remote content provider system at step 62.

The invention defined by dependent **claim 12** is a story-telling doll system including a plurality of the story-telling dolls as defined in claim 1 described above, each configured to transmit an identification code, and further requiring a remote content provide system, all as described from page 14, line 3 through page 15, line 9 with reference to Figures 4 and 5. Specifically, the remote content provider system 82 includes a communications subsystem 84 associated with the general purpose communications network, a database subsystem 86 including a registry of doll identification codes and associated content definitions, and a content management subsystem 88, associated with the communications subsystem and the database subsystem, that stores data files of a plurality of content types. Content management subsystem 88 is responsive to the identification code to: retrieve from said database subsystem a content definition associated with each received identification code (step

92 in Figure 5), and to make available for download at least one data file having a content type corresponding to the retrieved content definition (steps 94, 96 and 98).

The invention defined by independent **claim 16** is generally similar to that of independent claim 1, but specifies that communications unit **24** establishes its data communications link with a cellular telephone, as detailed on page 9, lines 17-22.

The invention defined by dependent **claim 17** is similar to that of claim 16, but further specifies that the doll includes a socket **26** configured for wired connection to the cellular telephone, as described on page 9, line 18.

The invention defined by dependent **claim 18** is similar to that of claim 16, but further specifies that the doll interfaces wirelessly with the cellular telephone, as described on page 9, line 19.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are as follows:

- I. Whether claims 1-6 and 9-22 are unpatentable under 35 U.S.C. 103(a) as obvious over Sharpe III et al. (US 6,012,961) in view of Bart et al. (US 6,514,118).
- II. Whether claims 10, 11, 21 and 22 are unpatentable under 35 U.S.C. 103(a) as obvious over Sharpe III et al. (US 6,012,961) in view of Bart et al. (US 6,514,118), and further in view of Rifkin et al. (US 5,873,765).

VII. ARGUMENTS

In the arguments presented below, various claims will be grouped together for clarity and conciseness of presentation of the issues before the Board of Patent Appeals and Interferences. To the extent that such grouping is interpreted by the Board as a waiver of separate consideration for the grouped claims, it should be noted that any such waiver is effective only for the purpose of simplifying the issues and/or reducing attorney costs in the present appeal proceedings, and does not constitute any admission beyond that scope. Furthermore, any such waiver is effective only in relation to the rejections of record. The Appellant reserves the right to withdraw any such waiver in the event that any new grounds for rejection is introduced during the appeal procedure.

A. Grounds of Rejection I – 35 U.S.C. 103(a) over Sharpe III et al. (US 6,012,961) in view of Bart et al. (US 6,514,118)

1. Claims 1-3 and 9-11

Turning first to the Sharpe III et al. reference (hereafter “Sharpe”), this is addressed in the Background section of the specification from page 1, line 16 through page 2, line 6 which states:

U.S. Patents Nos. 5,873,765 to Rifkin et al. and 6,012,961 to Sharpe, III et al. describe story-telling dolls which are operable in a free-standing mode to play a story stored in memory within the doll. This renders the doll much more suitable for general purpose use by a child who can freely take the doll to play or into bed without maintaining connection to a computer.

The dolls of both Rifkin et al. and Shape, III et al. both allow updating of the audio content stored within the memory of the doll by docking with a computer. As a result, despite the advantages of the free-standing playback mode of operation, updating of the audio content of these devices is totally dependent

upon an external computer. The required availability of a computer, and the need for some degree of computer literacy precludes operation of the device by young children and non-computer-minded adults, or when traveling away from the computer.

In other words, Sharpe (and Rifkin et al.) requires that any content update process is initiated and controlled through a computer with which the doll is docked, rendering the use of the doll unsuitable for independent operation by young children and non-computer-minded adults.

Turning now to the Bart et al. reference (hereafter "Bart"), this discloses a soft toy convertible between two characters and having a switchable audio system which generates distinct sets of audio outputs for each character. The toy has a number of switches to activate corresponding audio messages, and a switch for changing between the different characters. There is no indication that the audio content of the toy can be updated from an external source, and there is certainly no disclosure of any communication to a remote content provider being initiated by operation of a switch in the toy. In fact, it is unclear for what purpose the Examiner cited Bart, since both Bart and Sharpe disclose dolls including switches, and the switches of Bart seem no more relevant to any feature of the present invention than the switches of Sharpe.

In contrast, the story-telling doll of the present invention is configured to update content with the doll itself serving as a user interface and managing the communications link to a remote content provider.

Referring now to the claim language, it should be noted that independent claim 1 explicitly recites that the processing system, data storage device, audio output device and communications unit are all "contained within said body" of the doll. During the course of the prosecution, the Examiner repeatedly misstated the content of the Sharpe reference. For example, in the last two lines of page 2 of the Official

Action mailed July 23, 2007, the Examiner stated regarding the Sharpe reference that the "*communication unit ... [is] contained within said body [Sharpe, PC 20, Fig. 2].*" This statement is incorrect. The personal computer (PC 20) of Sharpe is clearly external to the doll, and is not "*contained within said body.*"

In the Final Rejection mailed November 30, 2007, in his Response to Arguments, the Examiner modified his reference to Sharpe, referring to "Sharpe, col. 3, lines 1-8" and, in the detailed rejections, additionally to "Fig. 1" to allegedly teach the recited elements contained within the body. However, neither Fig. 1 nor col. 3, lines 1-8 of Sharpe refer explicitly to any communications unit, nor has the Examiner made explicit any basis for his assertion that Sharpe discloses a communications unit in the body of the doll. Possibly, the Examiner may mean to assert that downloading of data from a computer to the doll, even under control of the computer, inherently implies certain communications capabilities. However, there is definitely no teaching in the cited passage that would render obvious a "*communications unit ... contained within said body ... configured to ... initiate a data communications link via a general purpose communications network,*" together with the other explicit limitations of claim 1.

Furthermore, the claims explicitly recite that the "*communications unit being configured to operate under control of said processing unit in response to said input signal*" to actuate the data communication download, where the input signal is provided by "*at least one user-operable switch manually operable by manipulation of at least one region of said body.*" Thus, the claim language clearly conveys that the communications unit is actuated to download data based on operation of a switch in the doll, i.e., that the story-telling doll is itself the user interface for initiating update of audio content.

In the Examiner's Response to Arguments (Final Rejection mailed November 30, 2007), the Examiner has addressed each of the above-quoted phrases in an isolated manner (page 2, items "B" and "C") without addressing the unique functionality which is conveyed by the claim language when taken in context. None of the cited passages from Sharpe discloses or renders obvious the claimed configuration in which actuation of a switch in the doll initiates a data communications link.

In summary, the Appellant submits that the device recited in claim 1 provides a story-telling doll with a fundamental shift of functionality compared to the prior art of record. According to the invention as claimed, the story-telling doll itself becomes the user interface for a content-downloading process, instead of the conventional approach requiring initiation and control of the download from an external computer. This unique functionality is clearly expressed in the explicit structural limitations of claim 1, and particularly in the provision of a "*communications unit ... contained within said body ... configured to ... initiate a data communications link via a general purpose communications network,*" where the operation of the communications unit is responsive to a signal provided by a "*user-operable switch manually operable by manipulation of at least one region of said body.*"

Thus, from a careful review of the cited references, it is clear that the references, considered alone or in combination, do not teach or render obvious a story-telling doll containing the recited components and configured to be responsive to an input signal generated by manipulation of a region of the doll's body to perform a content update procedure, all as defined in the language of independent claim 1.

In view of the above arguments, the Appellant believes that the Examiner has failed to show a prima facie case for obviousness of claim 1. Reversal of the § 103(a) rejection of claim 1 is respectfully solicited.

2. Claim 4

Claim 4 depends indirectly from claim 1, and is believed to be patentable at least for the reasons argued above in the context of claim 1. In addition to those arguments, the Appellant submits that claim 4 requires separate consideration as follows.

Claim 4 recites that the communication unit includes a modem "*configured for initiating a data connection across a cellular telephone network.*" In accordance with the present invention, this feature has particular significance for allowing communication with a remote content provider, thereby avoiding the need to connect via an on-site computer.

The Examiner has stated that "Sharpe-Bart disclose cellular network", citing Sharpe, col. 7, line 61. This statement is false. The cited passage relates to a "*wireless radio communication system as utilized for wireless speaker systems,*" which is neither a telephone network nor cellular. The wireless option is disclosed as an alternative to a cable for linking between the local computer and the doll.

In view of the above argument, the Appellant believes that the Examiner has failed to show a prima facie case for obviousness of claim 4. Reversal of the § 103(a) rejection of claim 4 is respectfully solicited.

3. Claim 5

Claim 5 depends indirectly from claim 1, and is believed to be patentable for at least the reasons argued above in the context of claim 1. In addition to those

arguments, the Appellant submits that claim 5 requires separate consideration as follows.

Claim 5 recites that the doll includes a modem associated with "*a socket ... configured for wired connection to the telephone network.*" In accordance with the present invention, this feature has particular significance for allowing communication with a remote content provider, thereby avoiding the need to connect via an on-site computer.

The Examiner has stated that "Sharpe-Bart disclose a socket", citing Sharpe, port 24, Fig. 2. However, Sharpe refers to a port for connection to the local computer, and clearly does not disclose a socket "*configured for wired connection to the telephone network.*"

In view of the above argument, the Appellant believes that the Examiner has failed to show a prima facie case for obviousness of claim 5. Reversal of the § 103(a) rejection of claim 5 is respectfully solicited.

4. Claim 6

Claim 6 depends indirectly from claim 1, and is believed to be patentable for at least the reasons argued above in the context of claim 1. In addition to those arguments, the Appellant submits that claim 6 requires separate consideration as follows.

Claim 6 recites additional features of the processor system that enable the doll to be used as a user interface for selecting among different options relating to data files available for download. These features, relating to selection of remotely available content, are clearly not disclosed in either Sharpe or Bart.

The Appellant fails to find any explicit statement by the Examiner in the prosecution history to-date to justify the Examiner's repeated rejection of claim 6.

This omission was brought to the Examiner's attention in the Appellant's response filed November 22, 2007, (page 2, 3rd paragraph) as follows:

Specifically, claim 6 is listed in the group of claims rejected under § 103(a) over Sharpe III et al. in view of Bart et al., but no justification has been provided for this rejection in the detailed rejections. The Applicant is therefore unable to respond to any substantive argument the Examiner may have intended to state with regard to this claim.

Despite this observation, and a concurrent request for clarification, no statement providing a basis justifying the rejection of claim 6 was forthcoming.

In view of the Examiner's silence on this issue, the Examiner has clearly failed to make any showing to establish a prima facie case for obviousness of claim 6. Reversal of the § 103(a) rejection of claim 6 is respectfully solicited.

5. **Claims 12-15**

Claim 12 depends from claim 1 through incorporation into the body of the claim of "a plurality of story-telling dolls according to claim 1", and is believed to be patentable at least for the reasons argued above in the context of claim 1. Claims 13-15 depend from claim 12, and are in turn therefore believed to be patentable. In addition to those arguments, the Appellant submits that claim 12 requires separate consideration as follows.

Claim 12 further recites features of a remote content provider system responsive to an identification code received from each doll to selectively make available for download data files having a corresponding content definition.

The Examiner has dismissed claim 12, stating that: "*Claim 12 contains identical limitations set forth in claim 1. Therefore claim 12 is rejected for the same rationale set forth in claim 1.*" The Examiner's statement attempting to equate the scope of claim 1 and claim 12 is very strange. The Examiner has chosen to ignore the

content of lines 4-20 of this claim, and has not provided any reasoned basis justifying the rejection of this claim over the cited references. The Examiner's comments regarding claims 13-15 also fail to relate in any way to the limitations of claim 12 incorporated into those claims.

In view of the above argument, the Appellant believes that the Examiner has clearly failed to show any prima facie case for obviousness of claim 12. Reversal of the § 103(a) rejection of claim 12 is respectfully solicited.

6. Claims 16 and 19-22

Claim 16 is an independent claim very similar in scope to independent claim 1, but where the communications unit establishes a data communication link with a cellular telephone. Claim 16 is believed to be patentable at least for the reasons argued above in the context of claim 1. Claims 19-22 depend from claim 16, and are in turn therefore believed to be patentable. In addition to the arguments stated above in the context of claim 1, which are reapplied here in their entirety, the Appellant submits that claim 16 requires additional and independent consideration as follows.

Claim 16 recites that the communication unit located within the doll body is "*configured to operate under control of said processing unit to ... establish a data communications link with a cellular telephone.*" In accordance with the present invention, this feature has particular significance as a preferred option for allowing communication with a remote content provider, thereby avoiding the need to connect via an on-site computer.

The Examiner has cited modem line 96 of Sharpe's Fig. 4 in relation to the cellular telephone communications link feature of claim 16. Firstly, the Appellant finds no indication in the cited modem line that the Sharpe system establishes a data link with a cellular telephone. To the contrary, a modem line would appear to be a

mutually exclusive alternative to the use of a cellular telephone as the basis of a communications link to a remote server. Secondly, and more fundamentally, the Examiner has here again clearly disregarded the explicit limitation of claim 16 that the communication unit is "*contained within said body*". Modem line 96 of Sharpe's Fig. 4 is shown as part of local computer 50, and not as part of doll 34. This distinction goes to the heart of the present invention in that it embodies the fact that the doll of the present invention itself manages the communications to obtain updated content from a remote server.

In view of the above argument, as well as the arguments stated above in the context of claim 1, which apply equally to claim 16, the Appellant believes that the Examiner has failed to show a prima facie case for obviousness of claim 16. Reversal of the § 103(a) rejection of claim 16 is respectfully solicited.

7. **Claim 17**

Claim 17 depends from claim 16, and is believed to be patentable for all of the reasons argued in the context of claim 16. In addition to those arguments, the Appellant submits that claim 17 requires separate consideration as follows.

Claim 17 recites that the doll includes "*a socket configured for wired connection to the cellular telephone.*" The configuration of a story-telling doll configured for wired connection to a cellular telephone is clearly neither taught nor rendered obvious by the citations of record.

In view of the above argument, the Appellant believes that the Examiner has failed to show a prima facie case for obviousness of claim 17. Reversal of the § 103(a) rejection of claim 17 is respectfully solicited.

8. Claims 18

Claim 18 depends from claim 16, and is believed to be patentable for all of the reasons argued in the context of claim 16. In addition to those arguments, the Appellant submits that claim 18 requires separate consideration as follows.

Claim 18 recites that the *"communications unit is configured to interface wirelessly with the cellular telephone."* The configuration of a story-telling doll configured for wireless connectivity with a cellular telephone is clearly neither taught nor rendered obvious by the citations of record.

In view of the above argument, the Appellant believes that the Examiner has failed to show a prima facie case for obviousness of claim 18. Reversal of the § 103(a) rejection of claim 18 is respectfully solicited.

B. Grounds of Rejection II – 35 U.S.C. §103(a) over Sharpe III et al. (US 6,012,961) in view of Bart et al. (US 6,514,118), and further in view of Rifkin et al. (US 5,873,765)

1. Claims 10 and 11

In order to simplify the issues for the purpose of this appeal, the Appellant has chosen not to argue separately the Ground of Rejection I with regard to claims 10 and 11. These claims will therefore stand or fall together with independent claim 1 based on the Board's decision on claim 1.

In the event that the Board reverses the Examiner's rejection of claim 1 under Grounds of Rejection I, the Appellant requests that Grounds of Rejection II also be reversed and claims 10 and 11 be found patentable by definition as dependent claims depending from an allowable claim.

2. Claims 21 and 22

In order to simplify the issues for the purpose of this appeal, the Appellant has chosen not to argue separately the Ground of Rejection I with regard to claims 21 and 22. These claims will therefore stand or fall together with independent claim 16 based on the Board's decision on claim 16.

In the event that the Board reverses the Examiner's rejection of claim 16 under Grounds of Rejection I, the Appellant requests that Grounds of Rejection II also be reversed and claims 21 and 22 be found patentable by definition as dependent claims as depending from an allowable claim.

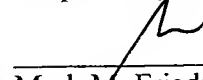
C. Closing Comments

The Appellant believes that the Board of Patent Appeals and Interferences will find numerous irregularities in the prosecution history of this file to-date, for example, with respect to the failure to set forth any explicit basis for rejections of a number of the claims.

Despite these irregularities, the Appellant respectfully requests that, if the Appellant's arguments are found persuasive, the Board should instruct that this case be passed directly to issue rather than reopening prosecution. The Appellant believes that the examination, at least with respect to the independent claims, has been sufficiently thorough to establish the patentability of the independent claims, and hence also of the claims depending therefrom. Reopening of prosecution would have the unfair effect of penalizing the Appellant who would incur yet further unnecessarily expense and delay due to the errors of the Examiner during prosecution thus far.

For the above reasons, the Board of Patent Appeals and Interferences is respectfully requested to reverse all of the Examiner's grounds of rejection for the claims under consideration and to pass the application to issue.

Respectfully submitted,



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Date: July 29, 2008

VIII. CLAIMS APPENDIX

1. A story-telling doll comprising:
 - (a) a doll body;
 - (b) a processing system including at least one digital processor, said processing system being contained within said body;
 - (c) a programmable data storage device associated with said processing system and contained within said body;
 - (d) an audio output device associated with said processing system and contained within said body;
 - (e) at least one user-operable switch manually operable by manipulation of at least one region of said body, said at least one switch being operative to provide an input signal to said processing system; and
 - (f) a communications unit associated with said processing system and contained within said body, said communications unit being configured to operate under control of said processing unit in response to said input signal to:
 - (i) initiate a data communications link via a general purpose communications network with a remote content provider source,
 - (ii) transmit to the remote content provider a request for download of at least one data file including audio content, and
 - (iii) receive the at least one data file including audio content from the remote content provider,

wherein said processor system is operative to save the at least one data file in said storage device and subsequently to play said audio content read from said at least one data file via said audio output device.

2. The story-telling doll of claim 1, wherein said communications unit includes a modem configured for initiating a data connection across a telephone network.

3. The story-telling doll of claim 2, wherein said modem is a PSTN modem configured for initiating a data connection across a PSTN telephone network.

4. The story-telling doll of claim 2, wherein said modem is configured for initiating a data connection across a cellular telephone network.

5. The story-telling doll of claim 2, wherein said doll further includes a socket associated with said modem and configured for wired connection to the telephone network.

6. The story-telling doll of claim 1, wherein said processing system is further configured to:

- (a) receive via said communications unit information indicative of at least two options relating to data files available for download from the remote content provider;
- (b) generate via said audio output device an audio prompt indicative of said at least two options;

- (c) receive via said at least one switch a user response indicative of a selected option; and
- (d) transmit to the remote content provider a response indicative of the selected option.

9. The story-telling doll of claim 1, wherein said at least one user-operable switch includes a switch manually operable by depressing a button associated with an external surface of the doll body.

10. The story-telling doll of claim 1, further comprising:
- (a) a rechargeable battery deployed within said doll body for powering at least said processor system, said rechargeable battery being electrically connected to a connector; and
 - (b) a charging unit deployed separate from said doll body and configured for mating with said connector so as to charge said rechargeable battery.

11. The story-telling doll of claim 10, wherein said connector further includes communication connections associated with said communications unit.

12. A story-telling doll system for providing repeatedly updated audio content for playing by a plurality of dolls, the system comprising:

- (a) a plurality of story-telling dolls according to claim 1, each of said dolls being configured to transmit an identification code; and
- (b) a remote content provider system including:

- (i) a communications subsystem associated with the general purpose communications network;
- (ii) a database subsystem including a registry of doll identification codes and associated content definitions; and
- (iii) a content management subsystem associated with said communications subsystem and said database subsystem, said content management subsystem storing data files of a plurality of content types, said content management subsystem being responsive to said identification code to:
 - (A) retrieve from said database subsystem a content definition associated with each received identification code, and
 - (B) make available for download at least one data file having a content type corresponding to the retrieved content definition.

13. The system of claim 12, wherein said plurality of content types includes a first age-range category and a second age-range category.

14. The system of claim 12, wherein said plurality of content types includes a first language category and a second language category.

15. The system of claim 12, wherein said plurality of content types includes at least one special-interest group.

16. A story-telling doll comprising:
- (a) a doll body;
 - (b) a processing system including at least one digital processor, said processing system being contained within said body;
 - (c) a programmable data storage device associated with said processing system and contained within said body;
 - (d) an audio output device associated with said processing system and contained within said body;
 - (e) at least one user-operable switch manually operable by manipulation of at least one region of said body, said at least one switch being operative to provide an input signal to said processing system; and
 - (f) a communications unit associated with said processing system and contained within said body, said communications unit being configured to operate under control of said processing unit to:
 - (i) establish a data communications link with a cellular telephone, and
 - (ii) receive from the cellular telephone at least one data file including audio content,

wherein said processor system is operative to save the at least one data file in said storage device and subsequently to play said audio content read from said at least one data file via said audio output device.

17. The story-telling doll of claim 16, wherein said doll further includes a socket configured for wired connection to the cellular telephone.

18. The story-telling doll of claim 16, wherein said communications unit is configured to interface wirelessly with the cellular telephone.

19. A combination of the story-telling doll of claim 16 and a cellular telephone in data communication with the doll, said cellular telephone being in communication with a cellular communications network for downloading said at least one data file including audio content from a remote content provider source

20. The story-telling doll of claim 16, wherein said at least one user-operable switch includes a switch manually operable by depressing a button associated with an external surface of the doll body.

21. The story-telling doll of claim 16, further comprising:
- (a) a rechargeable battery deployed within said doll body for powering at least said processor system, said rechargeable battery being electrically connected to a connector; and
 - (b) a charging unit deployed separate from said doll body and configured for mating with said connector so as to charge said rechargeable battery.

22. The story-telling doll of claim 21, wherein said connector further includes communication connections associated with said communications unit.

IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS APPENDIX

NONE